

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS and LAWYERS FOR
CIVIL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Defendants.

C.A. No. 19-12564-MBB

PLAINTIFFS' STATUS REPORT

At the status conference on June 30, 2020, the Court ordered Defendants¹ to complete production of Parts 1, 2, and 5 of the WSO Request to Plaintiffs by July 31, 2020.²

Defendants did not produce a single responsive page.³

Also on June 30, 2020, the Court ordered Defendants to report to Plaintiffs the number of outstanding documents and pages for *each subpart* of the WSO Request and Gang Profiling Request.

Defendants did not provide a single number.

¹ Defined terms shall have the same meaning as in Plaintiffs' complaint, D. 1.

² Defendants agree with the scope of the Court's order for production by July 31, 2020. *See* Def. Response, D. 32 at 1.

³ Defendants have not produced any documents responsive to the WSO Request since April 2020, at which time Defendants made documents responsive to Part 2 of the WSO Request available on their website.

The Gang Profiling Request has now been pending for over a year. The WSO Request has been pending for almost as long. Defendants have repeatedly failed to comply with both their own, self-imposed deadlines and now the Court's Orders, as shown below:

Category	Defendants' Self-Imposed Deadline	Court-Imposed Deadline	Status
<u>Document and page counts for number of documents responsive to Gang Profiling Request</u>	<u>April 30⁴</u>	<u>July 31, 2020⁵</u>	<u>Still outstanding</u>
<u>Production of Policy Directives responsive to subparts 1, 2, and 5 of WSO Request</u>		<u>July 31, 2020⁶</u>	<u>Still outstanding</u>
Completion of Search for documents responsive to Gang Profiling Request	April 1, ⁷ extended to April 15 ⁸		Still outstanding
Initial Production of documents responsive to Gang Profiling Request	May 30 ⁹		June 8 (production of 99 pages)
Production of Policy Directives responsive to subpart #10 of Gang Profiling Request	"Soon" as of April 10 ¹⁰		Partial completion July 1 ¹¹

⁴ *Id.*

⁵ Ordered orally at 6/30/2020 Status Conference.

⁶ Ordered orally at 6/30/2020 status conference.

⁷ D. 13 at 4.

⁸ D. 17 at 3.

⁹ *Id.*

¹⁰ Oral representation by counsel for Defendants at 4/10/2020 status conference.

¹¹ Defendants printed out and mailed in hard copy to Plaintiffs 519 pages of heavily redacted electronic documents on July 1, 2020. The cover letter did not indicate to which parts of Plaintiffs' requests the documents are meant to be responsive, but the production does contain some policy documents that appear responsive to subpart #10 of the Gang Profiling Request. DHS also

Category	Defendants' Self-Imposed Deadline	Court-Imposed Deadline	Status
Firm deadline for completion of production of documents responsive to Gang Profiling Request	N/A		Still outstanding
Firm deadline for completion of production of documents responsive to WSO Request	N/A		Still outstanding

As the United States District Court for the Eastern District of Pennsylvania explained just two weeks ago in adjudicating a FOIA case against DHS in a similar posture: “[t]he problem for DHS and [its counsel] is that DHS was not free to ignore this Court’s Order. . . . DHS’ approach here [is] unacceptable. Neither private litigants nor Government agencies are free to disregard this Court’s Orders.” *Manatt v. U.S. Dep’t of Homeland Sec’y*, 2:19-cv-01163-JDW, 2020 WL 4060277, at *7 (E.D. Pa. July 20, 2020). The court in *Manatt* “suspect[ed] that USCIS [a component agency within DHS] does, in fact, have a pattern or practice of violating FOIA” and urged DHS to “use this opinion as a warning to correct its conduct and come into compliance with the statute.” *Id.* Plainly that message has not yet been received.

Plaintiffs ask that the Court enter the attached Proposed Order, ordering that, **by August 19, 2020**, Defendants shall complete the production of documents responsive to the WSO Request in its entirety and report to Plaintiffs the number of outstanding documents and pages responsive to each Part (Parts 1-14) of the Gang Profiling Request. Plaintiffs also reiterate their proposal from the last two status conferences that Defendants complete their production of documents responsive

produced 25 pages of electronic documents to Plaintiffs that appear responsive to the Gang Profiling Request – but do not contain policies responsive to Part #10 – on August 3, 2020.

to the following discrete categories of requests for the Gang Profiling Request by **August 31, 2020**: #4 (East Boston High School documents), #7 (Operation Matador), and #10 (policy directives). If Defendants fail to comply with the Court's August 19 and August 31 deadlines, Plaintiffs propose that, as in *Manatt*, the Court "conduct a hearing to determine what remedy is appropriate for DHS's noncompliance with the Court's Order," including "testimony from the most senior DHS official who determined whether and how to comply with this Court's Order."

Date: August 3, 2020

Respectfully Submitted,

/s/ Lauren Godles Milgroom
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing will be filed through the electronic filing system of the Court, which system will serve counsel of record, on August 3, 2020.

/s/ Lauren Godles Milgroom
Lauren Godles Milgroom